IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION No. 4532 OF 2006

Prakash Ghevarchand Kothari)

Age 44 years, Occu. Business,)

R/at 3072, Datta Bol, Barshi,)

District Solapur) .. Petitioner

Vs.

Balasaheb Sakharam Jadhav,)

Age 55 years, R/at 3072)

Datta Bol, Barshi,)

District Solapur.) ..Respondent

Mr. V. P. Patankar, Advocate for the Petitioner.

Mr. I. M. Khairadi, Advocate for Respondent.

CORAM : R. M. S. KHANDEPARKAR, J.

DATE : OCTOBER 10, 2006.

ORAL JUDGMENT

Heard.

2. The present petition arises from the orders passed by the competent authority and revisional authority under the Maharashtra Rent Control Act 1999 (hereinafter called as "the said Act"). The challenge to the order of eviction passed by the competent authority and confirmed by the revisional authority is five fold. Firstly that, in terms of Section 55 of the said Act, every agreement whether it is a lease or leave and licence should be in writing and registered under the Registration Act and in case of failure in that regard, there is presumption in favour of the tenant that an agreement is executed by the tenant or by the licensee as the case may be. Considering the same, and in the case in hand as no written agreement between the parties, in relation to the suit premises was produced, the authorities below ought to have considered that the Petitioner’s claim of tenancy in respect of the suit premises was established and the Respondent had failed to rebut

the said presumption in favour of the Petitioner.

3. Secondly, that in terms of Section 24 of the said Act, the eviction proceedings under the said Act can be initiated only against those occupants of the premises in whose favour the licence continued to subsist on or after the enforcement of the said Act and not otherwise, and in the case in hand, it is the case of the Respondent himself that the licence had come to an end about three years prior to 1996, whereas the proceedings were initiated in 2003. In that regard, reliance is placed in the decision of the learned Single Judge in the matter of **Mr. Afsar Shaikh Vs. Mr. P. N. Kaul and another [1997 (2) Bom.C.R.456]** .

4. Thirdly, that it was the case of the Respondent himself in the pleadings that licence was for seven years, whereas in the course of recording of evidence, it was claimed to be two years, which apparently discloses inconsistent stand, sufficient to dismiss the eviction proceeding against the Petitioner, while holding the case of the Petitioner being established on the basis of evidence led by the Petitioner.

5. Fourthly, that it is the case of the Respondent that Exh. 40 expressly discloses induction of the Petitioner in the premises as the tenant in consideration of payment of rent and that it was agreed that he would be allowed to continue to be in occupation of premises for seven years and the said document has been totally ignored by both the authorities while directing eviction of the Petitioner.

6. Fifthly, that it is the case of the Petitioner that there is already appeal pending before the lower appellate court against order passed by the civil court in an injunction suit filed by the Petitioner and the judgment and decree passed in this case may result in conflict with the decision in the said suit and to avoid the same, it is necessary to set aside the impugned order and to stay the proceedings before the competent authority till the final disposal of the proceedings in the said suit.

7. It was also sought to be argued on behalf of the Petitioner that real intention of the Petitioner was to create tenancy rights in relation

to suit premises, and the same is reflected from Exh.40. It is also argued on behalf of the Petitioner that the Respondent had not produced any cogent evidence in support of the claim of the Respondent.

8. As regards the first ground of challenge, undoubtedly Section 55 of the said Act provides that the agreement of tenancy or the leave and licence should necessarily be in writing and it should be registered under the Registration Act. However, sub-section (1) clearly specifies that such requirement would arise only in cases of the lease or licence created after the commencement of the said Act. Apparently said provision by no stretch of imagination can be enforceable retrospectively. The said Act came into force from 31st March, 2002. In the case in hand, Petitioner was inducted in the premises, much prior to the commencement of the said Act. Being so, absence of agreement in writing or registration thereof, cannot create any right in favour of either of the parties.

9. Sub-Section (2) of Section 55 specifically provides that, "the responsibility of getting such

agreement registered shall be on the landlord and in the absence of the written registered agreement, the contention of the tenant about the terms and conditions subjected to which premises have been given to him by the landlord on leave and licence have been let to him shall prevail unless the rules otherwise." The provision of law undoubtedly speaks of a presumption in favour of the tenant or the licensee, in relation to the terms of the agreement when such agreement is not registered. It is true that Sub-Section (2) does not specifically provide that registration spoken thereof is in terms of Sub-Section (1). However, it specifically uses the expression "such agreement", as regards the responsibility to get the agreement registered and further, for the consequences for failure to get "such agreement" registered. Obviously expression "such agreement" refers to the agreement spoken of under sub-Section (1) to Section 55. Needless to say, therefore, that the consequences regarding the failure to register the agreement prescribed under Sub-Section (2) relate to the agreement, which is required to be registered in terms of Sub-Section (1) thereof. As already held above, application of rule regarding the registration of agreement can arise only in cases of the grant of lease or

licence, after the commencement of the said Act, and not otherwise. For the same reason, therefore, the presumption spoken of in Sub-Section (2) can arise only in cases where the agreement is required to be registered under Sub-Section (1) and not in relation to the agreements which were entered into and were not required to be registered prior to the commencement of the said Act. Therefore, merely because there was no agreement in writing prior to the commencement of the said Act, the question of granting benefit to the tenant or licensee under Sub-Section (2) or for any presumption in favour of the contention of tenant or licensee who was inducted, prior to the commencement of the said Act, does not arise, nor presumption can arise in their favour under Sub-Section (2) in relation to the terms of the agreement. Being so, the first ground of challenge is to be held as totally devoid of substance.

10. As regards the second ground of challenge, Section 24 of the said Act deals with the entitlement of the landlord to recover possession of the premises given on licence on its expiry. The contention of the Petitioner, however, is that in order to initiate proceeding for eviction of

licensee, the licence must be subsisting on the date or after the commencement of the said Act and in the absence thereof, no proceeding can lie for eviction of a person whose licence was terminated much prior to commencement of the said Act. In support of this contention, while relying on the decision in Afsar Shaikh's case, attention was drawn to Section 13-A(2) of the Bombay Rent Hotel and Lodging House Rates Control Act 1947 (hereinater called as old Rent Act). It was sought to be contended that Section 24 of the said Act is in pari materia with Section 13-A(2) of the old Rent Act and therefore the decision in Afsar Shaikh's case which is in relation to Section 13-A(2) of the old Rent Act would squarely apply to the case in hand, as the facts of the case in hand, are also similar to those of Afsar Shaikh's case.

11. In Afsar Shaikh's case learned Single Judge had held that, "on the face of the averments made in the application in the present case by licensor, it is not shown that the licence created with effect from 1-10-1983 continued or was in existence on and or after 1-10-1987 when Section 6(4) and 13-A(2) were introduced. Rather it is a specific case set out by the licencor in the application

made under Section 13-A(2) that the period of licence expired on 1-8-1986, as per the agreement and the licencor requested licencee on various occasions to vacate the premises on expiry of the licence agreement but, he did not vacate the same and continued to occupy the same illegally. Thus, it is not the case set out by the licencor in the application that on 1-10-1987 that the licence created in favour of licencee with effect from 1-10-1983 for a period of 33 months continued to exist and subsist on or after 1-10-1987. The competent authority has also held that the agreement provided the period of 33 months, with effect from 1-10-1983, had expired before the commencement of the proceeding. Thus, it is clear that the licence , according to licencor, came to an end on 1-8-1986 and it was not subsisting on 1-10-1987. The learned Single Judge, however, reproducing Sub-Section (4-A) of Section 5 of Old Rent Act observed that, "on 1-10-1987 when the amendment was brought into effect under the Rent Control Act, the licence was not subsisting and, therefore, definition of licence has no relevance". It is pertinent to note that the decision in Afsar Shaikh’s case was squarely based on the decision of another Single Judge in an unreported case in Civil

Revision Application No.210 of 1989 in the matter of **Shri Bhagwan Laxman Vs. Smt. Gangubai** delivered on 25th September, 1996 wherein it was clearly held that, "a close and careful reading to sub-section (4) of Section 6 would show that by this enactment, the provisions of Section 13A(2) and Part IIA were made applicable to the premises given on licence for residence by landlord referred to Section 13A(2) on or after commencement of the Bombay Rent Control Amendment Act 1986". Needless to say that the provisions of Section 13A(2) were introduced under the Bombay Rent Control Amendment Act 1986. It is also pertinent to note that sub-section (4) of Section 6 of the Old Rent Act clearly provided that, "notwithstanding contained in the foregoing provisions of this Section, or any other provisions of this Act, the application of PartII to premises given by landlord referred to in Section 13A(2) on or after the commencement of the Bombay Rent Hotel Lodging House Rates Control Amendment Act 1986 on licence for residence shall be subject to the provisions of Section 13A(2) and of Part-IIA." There is no section in the said Act corresponding to Section 6(4) of the old Rent Act and rightly so because Section 24 of the Rent Act clearly speaks of occasion to invoke powers by the

competent authority to evict the persons in occupation of the premises whose licence expires and yet continues to occupy the premises. Expiry of licence can be also by way of termination thereof. Being so, the second ground of challenge is to be held totally devoid of substance.

12. As regards the third ground of challenge, attention was drawn to the pleadings in the application for eviction and particularly in paragraph 2 thereof, and also to the cross examination of the Respondent before the competent authority. It is the contention on behalf of the Petitioner that the pleadings disclose that the licence to occupy was for a period of seven years, commencing from 1st October, 1987, whereas statement of Respondent before the competent authority in the course of cross examination that licence was for a period of two years. According to learned advocate for the Petitioner, this discrepancy in the statement discloses inconsistency in the stand, sufficient to disbelieve the Respondent regarding the claim or status of the Petitioner to be licencee.

13. Perusal of the pleadings in the original

application which is in Marathi undoubtedly disclose a statement to the effect that plaintiff had given the premises on leave and licence basis for the use thereof from 1-10-1989 for a period of seven years. At the same time his statement in the course of cross-examination before the competent authority reads that, "it was agreement between plaintiff and a Petitioner herein, that the Petitioner would occupy the suit premises on leave and licence basis for a period of two years." Undoubtedly in two statements, there is reference to two different periods while disclosing the period for which the Petitioner was to occupy the premises on leave & licence basis. However, in my considered opinion, this discrepancy is not relevant to decide the status of the Petitioner as to whether he is a licencee or lessee. In fact proper reading of both statements would reveal that in substance both the statements relate to the consent given by the Respondent to occupy the premises on leave and licence basis. The date and the period disclosed in two statements do not assist the Petitioner in any manner to contend that there is no consistency in the stand of the Respondent in relation to the status of the Petitioner in relation to the premises in question.

Both the statements essentially disclose that the consent was given to occupy the premises by the Petitioner as the licencee. In case of licence, to decide the character of relationship, the period is immaterial. What is relevant is the intention of the parties behind inducting a person in the premises belonging to the former. In the case in hand in both the statements, the Respondent being consistent in his stand that the consent to occupy the premises by the Petitioner was on leave and licence basis, mere discrepancy in relation to the period thereof is not sufficient to disbelieve the Respondent.

14. As regards fifth ground which relates to Exh. 40 i.e. the document which is said to be receipt in relation to the deposit of the amount of Rs.75,000/- with the Respondent. Undoubtedly, the Respondent has denied the said document. It is a matter of record that the document is a unilateral document in the sense that it does not bear any signature of the Respondent or any person on behalf of the Respondent, confirming the contents of the said document or acknowledging receipt of the said amount. Apart from the oral testimony in respect of payment of Rs.75,000/- by the Petitioner, no

documentary proof which can satisfactorily establish payment of such amount to the Respondent by the Petitioner in relation to the permission granted to the Petitioner to occupy the premises in question has been produced on record. In this background merely because a document sought to be prepared unilaterally by the Petitioner without showing any involvement of the Respondent in preparation of the said document, nor acknowledgement or confirmation of the contents thereof by the Respondent, no evidencery value can be attributed to such document and in favour of the Petitioner. Merely because in the document prepared by the Petitioner, the status of the Petitioner in relation to the use of the premises is referred as the lessee, that by itself will not enure to the benefit of the Petitioner to contend that there is a presumption in favour of the Petitioner regarding his status in relation to the use of the premises by him as lessee.

15. Lastly, the contention relates to the pendency of the appeal before the lower trial Court in relation to the decree passed in suit for injunction. Undisputedly the suit has been filed by the Petitioner to restrain the Respondent from

dispossessing the Petitioner from the suit premises. Section 47 of the said Act provides that, "save as otherwise expressly provided in this Act, no civil court shall have jurisdiction in respect of any matter which the competent authority or the State Government or any officer authorised, who is empowered by or under this Act to decide and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power so conferred on the competent authority or the State Government or such officer." This section merely discloses that civil courts have no jurisdiction to deal with the issues which are required to be dealt with under the said Act, by the authorities specified under the said Act. Undisputedly the issues relating to protection or eviction either of the lessee or of the licencee are to be dealt with under the said Act by the authorities specified under the said Act, and therefore, jurisdiction of the civil court in that regard would stand barred in terms of Section 47 of the Said Act. Being so, whatever injunctive relief that the civil court may grant in a suit, cannot be in contravention of the orders that may be passed under the said Act. Viewed from this angle, whatever order of

injunction which civil court or the lower appellate court, may pass or issue which it may deal with, cannot relate to the issues or the subject matter of controversy or dispute under the said Act and for the same reason therefore, question of any conflict arising between the order to be passed by the lower appellate Court with the order passed by the competent authority or the revisional authority does not arise at all and for the same reason the challenge on the fifth ground is also rejected, as being devoid of substance.

16. For the reasons above, there is no case made out for interference in the impugned order and hence, the petition is liable to be dismissed and is being dismissed. Rule is discharged with no orders as to costs.

17. At this stage, the learned advocate for the Petitioner prays that execution of the impugned order be stayed for a period of six months. The request is objected to on behalf of the Respondent. However, I am inclined to grant some time for vacating the premises by the Petitioner. Accordingly, execution of eviction order shall remain suspended till 28th February, 2007, subject

to condition that the Petitioner shall not induct any third party in the suit premises, nor shall create any third party interest in the suit premises and shall deliver vacant, peaceful possession of the premises to the Respondent on or before 28th February, 2007 and further that the Petitioner and all the major members of his family, major in age, shall file an undertaking that they would peaceably vacate the premise in the above terms, and the undertaking should be filed within a period of four weeks.

[R.M.S. KHANDEPARKAR, J.]